HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION NO. 17888 OF 2006

BETWEEN

M/s Midland Industries Limited,
Hyderabad.

.....Petitioner

And

The President,
District Forum-II,
Hyderabad & another

.....Respondents

::O R D E R ::

Counsel for the Petitioner : Shri C.S. Chakravarthy

Dated: 30.08.2006

Per G.S. SINGHVI, CJ

This petition is directed against order dated 12.07.2006 passed by District Consumer Disputes Redressal Forum-II, Hyderabad (for short 'the District Forum') in I.A.No.285 of 2006 in E.A.No.296 of 2005 in C.D.No.1560 of 1998.

Respondent No.2 - Smt. Sudha Datla purchased five Midas Gold

Bonds of Rs.2,500/- each from the petitioner. The term of the Gold Bonds was 17 months commencing from 05.10.1996 and the same were encashable on 04.03.1998. However, the petitioner suo motu extended the period of bonds from 05.03.1998 to 20.10.1998. Even thereafter, respondent No.2 was not paid the amount, which became due to her in lieu of the Gold Bonds. Therefore, she filed a complaint under Section 12 of the Consumer Protection Act, 1986 (for short 'the 1986 Act') for issue of a direction to the opposite party (petitioner herein) to pay Rs.16,560/- with interest at the rate of 24% and costs and compensation. The same was registered as C.D.No.1560 of 1998. By an order dated 28.04.2000, the District Forum allowed the complaint and directed the petitioner to pay a sum of Rs.16,560/- to respondent No.2 with interest at the rate of 23%.

In the appeal preferred by the petitioner, which was registered as F.A.No. 494 of 2000, the Andhra Pradesh State Consumer Disputes Redressal Commission (for short 'the State Commission') vide its order dated 24-4-2001 stayed the operation of the order of the District Forum. However, after hearing the parties, the State Commission dismissed the appeal vide its order dated 28.04.2004. The petitioner did not challenge that order either by filing revision before the National Consumer Commission or a writ petition under Article 226 of the Constitution of India. Therefore, the order passed by the District Forum, which was confirmed by the State Commission will be deemed to have become final.

In the meanwhile, respondent No.2 filed execution petition, which was registered as P.P.No. 42 of 2000. By an order dated 10-8-2004 the District Forum, after taking cognizance of order dated 16-3-2004 passed by the Board of Industrial and Financial Reconstruction (BIFR) in Case No. 358 of 1999 whereunder settlement

of unsecured loans was directed to be made in 5 yearly instalments commencing from 1-1-2005, dismissed the Execution Petition as premature. After 4 months, respondent No.2 filed another execution petition, which was registered as E.A.No.296 of 2005. On notice, the petitioner filed I.A.No.285 of 2006 before the District Forum for grant of permission to deposit 1/5th of the principal amount due to respondent No.2 together with interest at the rate of 10% for the period from 1-4-2004 to 31-3-2005. After hearing the parties and by relying on the decision of the National Commission, the District Forum passed order dated 12-7-2006 whereby it dismissed the I.A. filed by the petitioner and directed the petitioner to comply with order dated 20-4-2000 passed in C.D.No.1560 of 1998 within one month.

Learned counsel for the petitioner argued that in view of the scheme sanctioned by the BIFR in terms of Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the 1985 Act'), the petitioner cannot be compelled to pay the entire amount which is payable to respondent No.2 in terms of order dated 20.04.2000 passed by the District Forum. Learned counsel submitted that the scheme sanctioned by the BIFR has the effect of overriding the judgments and decrees passed by the judicial fora including District Forum and State Commission, and, therefore, the order under challenge is liable to be quashed.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. In our opinion, the scheme framed by BIFR cannot override order dated 20-4-2000 passed by the District Forum, which was confirmed by the State Commission while dismissing the appeal preferred by the petitioner, because the same have acquired finality. It is trite to say that even the Legislature cannot enact a law, which has the effect of overriding the judicial verdict

unless substratum of the verdict is removed. Therefore, the scheme framed by BIFR cannot be relied for nullifying the effect of the orders passed by the District Forum and the State Commission. For the same reason, the non-abstante clause contained in Section 32 of the 1985 Act is also not available to the petitioner for avoiding compliance of order dated 20-4-2000 passed by the District Forum.

There is another reason for our disinclination to entertain the petitioner's challenge to the order passed by the District Forum namely availability of an effective alternative remedy by way of appeal under Section 15 of the 1986 Act. That section lays down that a person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of 30 days from the date of order. Proviso to Section 15 empowers State Commission to condone delay in filing of the appeal, if sufficient cause is shown for that purpose. The remedy available to the petitioner by way of appeal has to be treated as an effective alternative remedy because that section forms part of the scheme of the 1986 Act and there is no extra-ordinary reason for us to make a departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India, if an effective alternative remedy is available to the petitioner.

For the reasons stated above, the writ petition is dismissed. However, it is made clear that the dismissal of the writ petition shall not preclude the petitioner from filing an appeal under Section 15 of the 1986 Act.

As a sequel to dismissal of the writ petition, W.P.M.P.No.22442 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

30.08.2006

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